APPENDIX A

1. Labor Management Relations Act, 1947, Title I, § 2(3), §14(a):

Section 2(3). The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined. [61 Stat., 137 (1947), 29 U.S.C., § 152(3) (1964)]

Section 14(a). Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining. [61 Stat., 151 (1947), 29 U.S.C., § 164(a) (1964)]

2. New York Labor Law, Article 22-A, § 807:

1. No court nor any judge or judges thereof shall have jurisdiction to issue any restraining order or a temporary or permanent injunction in any case involving or growing out of a labor dispute, as hereinafter defined * * *.

* * *

10(c). The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, or concerning employment relations, or any other controversy arising out of the respective interests of employer and employee, regardless of whether or not the disputants stand in the relation of employer and employee.

APPENDIX B

(Opinion of the Supreme Court of the State of New York (Kings County) at Special Term)

OPINION OF DI GIOVANNA, J.

The action herein is for a permanent injunction and damages allegedly caused by the defendants' conduct and conspiracy to intentionally inflict harm on plaintiff unions and to deprive their members of the rights to organize into a union of their own choosing. Plaintiffs move for a temporary injunction. All defendants cross-move to dismiss the complaint on the ground that it fails to state a cause of action and the defendant, New York Shipping Association, Inc., additionally cross-moves for a temporary injunction prohibiting the plaintiffs from picketing in or near the terminals operated by the defendant in Kings County or at any other place in the Port of New York.

The Shore Side Supervisors Union (hereinfter "SSU") alleges that it was granted in September 1966 a charter by plaintiff District 2, Marine Engineers Beneficial Association (hereinafter "District 2") to organize shore side supervisory personnel employed by steamship and stevedoring companies in the shipping, maritime and longshore industries and, since that time, with the assistance of District 2, has been engaged in organizing in the Port

of New York such shore side supervisors as hiring agents, assistant pier superintendents and pier superintendents; that by August 1967, it had among its members the majority of the above mentioned supervisors working in the Port of Brooklyn and who designated SSU as their representative for collective bargaining with their employer; that about that time the defendants entered into a conspiracy to destroy SSU as a trade union, to injure thereby District 2 and to prevent the members from exercising their rights to organize into a trade union; that in pursuance of said conspiracy, defendant Chopin, the chairman of the defendant New York Shipping Association (hereinafter "NYSA"), and others presently unknown to plaintiff, agreed that they would arbitrarily refuse to have any discussions with SSU concerning their employees who have chosen SSU as their collective bargaining agent; that when said actions precipitated SSU to resort to a strike, defendant Gleason, the president of International Longshoremen's Association (hereinafter "ILA"), and others unknown to plaintiff, agreed to use the membership of ILA to breach the strike and to prevent SSU from realizing its right to represent its membership.

It is additionally alleged that in furtherance of the conspiracy, (1) defendant "Brooklyn stevedores" failed to appear at a meeting called by SSU for the purpose of exhibiting proof that it represented the majority of the Brooklyn supervisory employees; (2) Brooklyn stevedores rejected the offer to SSU to prove its majority representation; (3) when advised that SSU was authorized by the members to strike Brooklyn Stevedores, the latter replied that they did not want their supervisors to be represented by a union; (4) when SSU struck the defendants, NYSA and ILA called a special meeting of the Labor Relations Committee (hereinafter "LRC") which was established under their collective bargaining agreement. This was done for the purpose of having their representatives find that the honoring of the SSU picket line by members

of the ILA was a violation of the contract between NYSA and ILA; (5) that LRC did find that the honoring of the picket line by ILA members was a violation of the contract and that thereafter ILA ordered its members to break the strike; (6) Brooklyn stevedores attempted to enforce the decision of LRC by means of an injunction.

Plaintiffs assert that by reason of the foregoing, they have suffered irreparable damage and injury through the continued threat to break the picket line and have monetarily suffered damage to the extent of one million dollars.

The basis for an action in conspiracy is the commission of a tortious act or a legal one by wrongful means (*Cuker Industries Inc.* v. *Cro Construction Co.*, 6 App. Div. 2d 415). Plaintiffs fail to show the violation of any legal duty owed by the defendants to the plaintiffs. The law does not confer upon plaintiffs any right to representation status. Plaintiffs, being the representatives of a group of supervisors, are denied access to the procedures of federal and state law, which alone can confer legally enforceable representation rights upon any labor organization. Thus, the employers are legally privileged to refuse to bargain with the supervisors or any of their representatives (*260 Madison Ave. Corp.* v. *Nelson*, 284 App. Div. 254; *A. H. Bull Steamship Co.* v. *National Maritime Engineers' Beneficial Association AFL-CIO*, 250 F. 2d 332). And the mere opposition of one union to the formation of another union is not an act which the law will prohibit. The law recognizes the right of every union to strengthen its forces by lawful means. If other unions arise which may in some manner act to the detriment of an existing union, the court will not impede the efforts of the existing union from protecting itself by prohibiting it from peacefully counseling others not to recognize the newcomer. Under these principles the court finds that the complaint fails to spell out the commission of any wrong against the plaintiffs and accordingly the motion by the plaintiffs for a preliminary injunction is denied and the complaint is dismissed.

In passing it should be noted that upon argument of the motion plaintiffs asked the court to also consider the action herein as one for a prima facie tort. Under any theory, no wrong is set forth in the complaint but, even assuming arguendo that the facts are sufficient to set forth a prima facie tort, the complaint would be insufficient in its failure to allege special damages. (*Glaser* v. *Kaplan,* 5 A. D. 2d 829, 830.)

The cross motion of NYSA for a preliminary injunction is granted in all respects. The picketing by the plaintiffs does not encourage a lawful labor objective and there is no labor dispute within the meaning of Section 807 of the Labor Law (*260 Madison Avenue Corp.* v. *Nelson,* 284 App. Div. 254, *supra*). The trial of the counterclaim for a permanent injunction and damages is set down for November 8, 1967 at 10 A.M. at Special Term, Part III of this court subject to the approval of the Justice presiding. Settle order on notice.

DI GIOVANNA,
J.S.C.

APPENDIX C

(Opinion of the Appellate Division of the Supreme Court of the State of New York, Second Department)

SUPREME COURT

APPELLATE DIVISION

SECOND JUDICIAL DEPARTMENT

BELDOCK, P. J., RABIN, HOPKINS, BENJAMIN and MUNDER, *JJ.*

DISTRICT 2, MARINE ENGINEERS BENEFICIAL ASSOCIATION (AFL-CIO). *et al.*,

Appellants,

against

NEW YORK SHIPPING ASSOCIATION, INC., *et al.*,

Respondents,

NORTHEAST STEVEDORING CO., INC., *et al.*,

Defendants.

Appeal from an order of the Supreme Court at Special Term (Anthony J. Di Giovanna, J.), entered November 2, 1967, in Kings County, which (1) granted two cross motions, each by a different group of defendants, for dismissal of the complaint; and (2) granted a further cross motion by one of such groups of defendants for a temporary injunction.

SCHULMAN, ABARBANEL & KRONER (HOWARD SCHULMAN and BERTRAM PERKEL, of counsel), for appellants.

LORENZ, FINN & GIARDINO (ALFRED GIARDINO, C. P. LAMBOS and JAMES F. COSGROVE, of counsel), for respondents New York Shipping Association, Inc., *et al.*

WALDMAN & WALDMAN (LOUIS WALDMAN, SEYMOUR M. WALDMAN and MARTIN MARKSON, of counsel) for respondent INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, *et al.*

BELDOCK, *P. J.* The plaintiffs are (1) District 2, Marine Engineers Beneficial Association (AFL-CIO), (2) the Shoreside Supervisors Union, Dist. 2, MEBA (AFL-CIO) (hereinafter called "SSU") and (3) certain members of SSU. The individual plaintiffs sue for themselves and on behalf of all other members of SSU similarly situated. SSU is an "affiliate" of District 2, Marine Engineers Beneficial Association (AFL-CIO) and represents certain of the hiring foremen and pier superintendents ("supervisory personnel") working on the piers in Brooklyn.

The defendant International Longshoremen's Association, AFL-CIO (hereinafter called "ILA") is a labor union which represents the longshoremen and other dockside employees, other than supervisory personnel, employed in the Port of New York. Its president is Thomas W. Gleason, named as one of the defendants. The employers of the longshoremen and supervisory personnel are various domestic and foreign shipping lines and stevedoring contractors which are organized for collective bargaining purposes into the defendant New York Shipping Association, Inc. (hereinafter called "NYSA"). The chairman of NYSA, Alexander Chopin, is also named as a defendant. The remaining defendants are representatives of ILA and NYSA in the Labor Relations Committee (hereinafter called "LRC"), the grievance and arbitration tribunal created under the ILA-NYSA collective bargaining agreement.

The action is for (1) a permanent injunction against defendants' alleged conduct and conspiracy to intentionally inflict harm on the plaintiff unions and to deprive their members of their right to organize into a union of their own choosing and (2) money damages. Plaintiffs moved for an injunction *pendente lite*. All the defendants, except two of the employer defendants, cross-moved to dismiss the complaint on the ground that it failed to state a cause of action, and all the defendants other than the same two employer defendants and ILA, Gleason and Robert Con-

ners (the latter is the ILA representative in the LRC) additionally counterclaimed for an injunction and money damages and cross-moved for an injunction *pendente lite* prohibiting plaintiffs from picketing in or near the terminals operated by the employer defendants in Kings County or any other place in the Port of New York. Special Term granted the cross motions in all respects.

The complaint sets forth two causes of action, the first by the unions and the second by the members of SSU. The material allegations in the first cause of action have been fairly summarized by Special Term and require only a brief recital. In substance, it alleged that SSU had been chartered to organize shoreside supervisory personnel employed by steamship and stevedoring companies; that by August, 1967 it had among its members the majority of the supervisors working in Brooklyn (Kings County) who had designated SSU as their representative for collective bargaining with their employers; that about that time the defendants entered into a conspiracy to destroy SSU as a trade union and to prevent its members from exercising their right to organize into a trade union; that, in pursuance of said conspiracy, Chopin, NYSA. the employer defendants and others agreed that they would arbitrarily refuse to have any discussion with SSU concerning their employees; and that, when said actions caused SSU to resort to a strike, Gleason, ILA and others agreed to use the membership of ILA to break the strike. It is additionally alleged that in furtherance of the conspiracy the employer defendants failed to appear at a meeting called by SSU for the purpose of exhibiting proof that it represented the majority of the Brooklyn supervisory employees; that the employer defendants rejected the offer of SSU to prove its majority status; that, when SSU struck and established picket lines at all work sites of the employer defendants, NYSA and ILA callled a special meeting of LRC for the purpose of having their representatives find that the honoring of the SSU picket lines by members

of ILA was a violation of the contract between NYSA and ILA; that LRC did find that the honoring of the picket lines by ILA members was a violation of the contract; and that thereafter ILA ordered its members to break the strike.

In the second cause of action it is alleged, in addition to repeating the foregoing, that the defendants entered into the conspiracy for the additional purpose and object of depriving the members of SSU of their right to organize and belong to a union of their own choosing and that the individual plaintiffs and all others similarly situated have suffered and continue to suffer irreparable damage and injury.

Supervisory personnel occupy a unique and somewhat anomalous position in the field of labor-management relations. The National Labor Relations Act as amended by the Labor Management Relations Act, 1947 (Taft-Hartley Law) provides in subdivision (3) of section 2 that "The term 'employee' * * * shall not include * * * any individual employed as a supervisor" (U.S. Code, tit. 29, § 164, subd. [3]). Subdivision (a) of section 14 of the amended act (U. S. Code, tit. 29, § 164, subd. [a]) provides that any individual employed in a supervisory capacity may become a member of a labor union "but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining." Thus, under the Taft-Hartley Law, an employer is relieved of the duty to bargain with a union as the representative of supervisory personnel. As stated in *260 Madison Ave. Corp.* v. *Nelson* (284 App. Div. 254), "the Taft-Hartley Law provides that a supervisory employee may become a union member, if he so desires, but his employer may not be compelled to treat him as an employee for collective bargaining purposes regardless of any provision of national or local law."

Notwithstanding the seemingly clear expression of legislative policy and intent as enunciated in the Taft-Hartley

Law, the plaintiffs urge that the defendant employers have an affirmative duty to bargain collectively with the representative of their supervisory employees and that any interference with the exercise of the latters' right to bargain collectively gives rise to a remediable cause of action. Support for this argument is predicated upon Section 17 of Article I of the Constitution of the State of New York which provides: "Employees shall have the right to organize and to bargain collectively through representatives of their own choosing."

In our opinion, the plaintiffs' reliance on the provision of the Constitution hereinabove quoted is unavailing. It has been held that, while employees have the constitutional right to organize, it does not necessarily follow that all employers have the concomitant obligation to bargain collectively with them if they do organize (*Matter of Trustees of Columbia Univ.* v. *Herzog,* 269 App. Div. 24, affd. 295 N.Y. 605). "It is evident that the constitutional provision guaranteeing employees the right to organize and bargain collectively through representatives of their own choosing does not cast upon all employers a correlative obligation. The constitutional provision was shaped as a shield; the union seeks to use it as a sword" (*Quill* v. *Eisenhower,* 5 Misc. 2d 431, 433).

Subdivision (a) of section 14 of the Taft-Hartley Law provides that an employer may not be compelled to treat a supervisor as an employee for the purpose of any law, *national or local,* relating to collective bargaining. To construe section 17 of article I of the Constitution of the State of New York as guaranteeing to supervisory personnel the right to compel their employers to bargain collectively with their union, as suggested by the plaintiffs, would be contrary to and in derogation of the national policy as expressed in the Federal statute which, in effect, unclassifies supervisors as "employees" under Federal and State law, statutory or constitutional, regulating the exercise of employees' collective bargaining rights. As was said in

Hanna Mining v. *District 2, Marine Eng. Ben. Assn.* (382 U.S. 181; 189), "the Committee reports reveal that Congress' propelling intention was to relieve employers from any compulsion under the Act and under state law to countenance or bargain with any union of supervisory employees."

Since Federal law expressly accords to employers the right to refuse to consider their supervisory personnel as employees for collective bargaining purposes, the allegations of the complaint which, in substance, merely charge the defendant employers with refusing to meet and negotiate with SSU do not form the basis of a legally enforceable cause of action. Nor does the employer's participation, through the LRC, in the grievance procedure established under the contract between NYSA and ILA constitute a basis for the relief herein sought. Clearly, these defendants had the right to invoke the grievance procedure for the purpose of protecting their interest which they believed were being prejudiced as the result of the refusal of ILA's members to cross the picket lines.

As to the remaining defendants, the gravamen of the cause of action against them is that they conspired to oppose the plaintiffs' efforts to obtain recognition as the bargaining representative of the supervisory personnel; that they directed ILA members not to support the strike; and that they participated in a grievance proceeding under the contract with NYSA to declare the refusal of its members to cross the picket lines a violation of the contract and to direct its members to cross the picket lines.

We are in accord with the views expressed by the court at Special Term that ILA's opposition to SSU's efforts to achieve recognition was in pursuance of a legitimate interest and that its conduct in so doing was legally permissible and non-actionable. There is no charge that ILA has attempted to interfere with SSU's efforts to recruit membership or has committed any acts directed against

that union's members (cf. *American Guild of Musical Artists* v. *Petrillo*, 286 N.Y. 226).

Disregarding, as we must, the allegations of the complaint which are clearly conclusions of law, we find no facts therein set forth which support the plaintiffs' claims for the relief which they seek and are of the opinion that the complaint was properly dismissed.

There is only left for consideration the question of whether the cross motion for an injunction *pendente lite* should have been granted. The plaintiffs maintain that they have a right to peacefully picket to make known their grievances; the defendants contend that the picketing, which sought to compel the defendant employers to recognize SSU as the bargaining agent for its members, was not for a lawful objective and, hence, enjoinable.

Section 807 of the Labor Law (formerly Civ. Prac. Act, § 876-a) does not bar injunctive relief in a case where no lawful labor objective is sought (*Goodwins* v. *Hagedorn*, 303 N.Y. 300, mot. for rearg. den. 303 N.Y. 673). At bar, the establishment and maintenance of the picket lines at the piers were intended solely for the purpose of "compelling" the defendant employers to recognize SSU as the bargaining agent for its supervisor members. In view of the fact that it is contrary to established national policy to compel employers to treat supervisors as employees for collective bargaining purposes, we find that, under such circumstances, it is an "unfair labor objective" for a union representing supervisors to attempt to achieve this result by the use of coercive economic pressure which seeks as its goal the very thing which the union is otherwise prohibited from accomplishing. Furthermore, the issuance of the injunction *pendente lite* did not constitute an infringement of the plaintiffs' right of free speech (cf. *International Broth. of Teamsters, Local 695, AFL* v. *Vogt*, 354 U.S. 284). Although peaceful picketing is recognized as an exercise of the right of free speech, it cannot be made the cover for con-

certed action against an employer in order to achieve an unlawful or prohibited object (cf. *Vogt* v. *International Broth. of Teamsters, Local 695, A.F.L.*, 270 Wis. 321a). We conclude that the issuance of the temporary injunction constituted an appropriate exercise of the court's jurisdiction.

The order should be affirmed, without costs. Rabin, Hopkins, Benjamin and Munder, J.J., concur.

APPENDIX D

(Opinion of the Court of Appeals of the State of New York)

DECISION COURT OF APPEALS—JUNE 14, 1968

DISTRICT 2, MARINE ENGINEERS BENEFICIAL ASSOCIATION (AFL-CIO), & ORS., &C., *Appellants*,

v.

NEW YORK SHIPPING ASSOCIATION, INC., & ORS., &C., *Respondents*.

Order modified by denying defendants' cross-motion for a temporary injunction against picketing by plaintiff union, and, as so modified, affirmed without costs, in the following memorandum:

The purpose of the picketing in question was not "unlawful", and section 807 of the Labor Law prevents issuance of an injunction. Section 14(a) of the Labor Management Relations Act prevents supervisors' unions from claiming the benefit of statutes requiring employers to bargain collectively but does not limit their right to engage in otherwise lawful picketing (*A. H. Bull Steamship Co.* v. *National Marine Eng. B. Ass'n*, 250 F.2d 332, 339, cert. den. 355 U.S. 932; see *Hanna Mining* v. *Marine Engineers*, 382 U.S. 181, 189). All concur except Scileppi and Keating, JJ., who dissent and vote to affirm on the ground that this is not a labor dispute under § 807 of the Labor Law and the picketing by the plaintiffs was not for a lawful labor objective.